
From: Adriana Valencia <avalenc@gmail.com>

Sent: Thursday, March 20, 2025 11:21 PM

To: ashen@publiclawgroup.com <ashen@publiclawgroup.com>

Cc: Aimee Steele <asteele@actransit.org>; Diane Shaw <dshaw@actransit.org>; Murphy McCalley <mmccalley@actransit.org>; Joel Young <jyoung@actransit.org>; H. E. Christian (Chris) Peeples <cpeeples@actransit.org>; Sarah Syed <ssyed@actransit.org>; Jean Walsh <jwalsh@actransit.org>; Anthony C. Silva <acsilva@actransit.org>

Subject: [EXTERNAL] Concerns regarding the AC Transit Board of Directors March 3, 2025 Closed Session Meeting

March 20, 2025

Andrew Shen

Renne Public Law Group

350 Sansome Street, Suite 300

San Francisco, CA 94104

VIA E-mail

Dear Mr. Shen:

I write to address the District's settlement agreement with Mr. Hursh and the Board's subsequent action to revise it on March 3, 2025. While the agreement no longer explicitly references a "Senior Advisor" position, it continues to violate both the Brown Act and Public Utilities Code § 24886 for the following reasons:

1. Narrow Construction of Brown Act Exceptions

The Brown Act's "significant exposure to litigation" exception under Government Code § 54956.9 must be narrowly construed, as established by multiple California courts. While this exception permits discussion of settlement strategies and approval of settlement payment amounts in closed session, it does not authorize the creation of new positions or establishment of position classification terms, even when embedded within a settlement agreement.

The California Court of Appeal in *Trancas Property Owners Ass'n v. City of Malibu* specifically held that the Brown Act's litigation exception cannot be used as a "subterfuge to reach nonlitigation oriented policy decisions." Creating a new position with specific duties, compensation terms, and reporting relationships constitutes precisely such a policy decision.

2. Separate Statutory Requirements Under Public Utilities Code § 24886

Public Utilities Code § 24886 explicitly requires that "The board **shall by resolution** determine and create such number and character of positions as are necessary properly to carry on the functions of the district and **shall** establish an appropriate salary, salary range, or wage **for each position so created**." This mandatory requirement exists independently of any settlement authority and cannot be circumvented through closed session actions.

3. Creation of De Facto Position

The revised settlement agreement still effectively creates a new position by:

- Establishing specific duties related to MTC participation and labor negotiations

- Maintaining executive-level compensation, including salary and retirement system service credit
- Creating new reporting relationships
- Setting unique employment terms including unrestricted outside employment

Simply removing the "Senior Advisor" title does not change the fundamental reality that the agreement creates a distinct position requiring proper statutory authorization.

4. New Brown Act Violations

The Board's action on March 3, 2025 to amend the settlement agreement appears to have occurred without proper agenda notice of Mr. Hursh's claim, constituting a new Brown Act violation. The Board's action was taken on a matter that was not properly described in the agenda for the meeting at which the action was taken, and none of the exceptions specified in Gov. Code § 54954.2(b) was satisfied. If the action could properly be discussed in closed session, it was not sufficiently described in the closed session agenda.

The March 3, 2025 Special Meeting agenda only specified the "Potential litigation regarding alleged Brown Act Violation," and did not provide notice of potential deliberation and action regarding Mr. Hursh's claim, or even that the Board could discuss significant exposure to litigation that would provide notice of such. As I noted previously, the Brown Act requires that claims made pursuant to the Government Claims Act or other written communications threatening litigation "be available for public inspection." The District has acknowledged this requirement, yet continues to take action without proper notice.

The District's argument that posting settlement terms would "completely frustrate the ability of agency counsel to consult with a board regarding settlement" misses the mark. While settlement strategy discussions may be confidential, the actual creation of positions and establishment of employment terms must occur in open session through proper Board resolution as required by § 24886. Creation of a new position without a title, or modifying the title of an existing position still effects creation or modification of a classification with compliance obligations as required by § 24886.

5. Conclusion and Proposed Tolling Agreement

Nothing in the Brown Act prevents the District from entering in a settlement agreement or MOU providing for conditional resolution of a claim, subject to the District completing conditions such as establishment of a position in open session per § 24886, where the failure of such could void the settlement agreement by its terms and potentially open it to re-negotiation, or prescribe specified alternatives not requiring Board action in open session. Thus, the District's settlement deliberations argument fails to comport with the Brown Act litigation exception's narrow construction.

As you are aware, the Brown Act creates specific agenda obligations for notifying the public with a "brief description" of each item to be discussed or acted upon, and also creates a legal remedy for illegally taken actions — namely, the judicial invalidation of them upon proper findings of fact and conclusions of law.

Pursuant to that provision (Government Code Section 54960.1), I demand that the Board of Directors cure and correct the illegally taken action to redress the illegality and

provide the public the awareness and opportunity to comment of which it was deprived as follows:

1. The formal and explicit withdrawal of any commitment made
2. The Settlement Agreement with Michael Hursh be rescinded
3. The disclosure at a subsequent meeting why individual members of the legislative body took the positions — by vote or otherwise — that they did, accompanied by the full opportunity for informed comment by members of the public at the same meeting, notice of which is properly included on the posted agenda. Informed comment includes the provision of any and all documents in the possession of AC Transit related to the action taken, with copies available to the public on request at the offices of the agency and also at the meeting at which reconsideration of the matter is to occur.
4. If the District elects to reconsider the matter, the meeting at which reconsideration of the matter is to occur to include on the posted agenda an explanation as to the nature of the threat of litigation, the identity of the claimant making the threat, and the letter or claim, or reference to it, if the District had received a letter or claim.
5. If the District elects to reconsider the matter, the meeting at which reconsideration of the matter is to occur to include on the posted agenda an open session item to create the employee classification that is the subject of this matter following proper procedures under § 24886.

As provided by Section 54960.1, you have 30 days from the receipt of this demand to either cure or correct the challenged action or inform me of your decision not to do so. If you fail to cure or correct as demanded, such inaction may leave me with no recourse but to seek a judicial invalidation of the challenged action pursuant to Section 54960.1, in which case I would also ask the court to order you to pay my court costs and reasonable attorney fees in this matter, pursuant to Section 54960.5.

While I do not waive any right to assert equitable tolling due to the Board's actions on March 3, 2025 as to the subject matter of my February 10, 2024 letter and the Brown Act violations on November 13, 2024, it should be of mutual interest to resolve this matter without litigation. Therefore, I am proposing that the District enter into a tolling agreement. **If the District is interested in this, please respond with a signed copy or a signed counter-proposal by close of business on March 25, 2025.** A proposed tolling agreement is attached.

Sincerely,
Adriana Valencia

CC: Aimee Steele, General Counsel
Board of Directors
ATTACHMENT

TOLLING AGREEMENT

WHEREAS, Adriana Valencia (“Claimant”) and Alameda Contra Costa Transit District (“District”) agree as follows:

1. The purpose of this Tolling Agreement is to protect the interests of all parties during the pendency of negotiations concerning disputed claims covering alleged Brown Act violations related to District’s creation of a Senior Advisor position and appointment to this role, and all matters asserted in Claimant’s February 10, 2025 letter to the District concerning actions taken at the District’s November 13, 2025 closed session Board meeting. The parties hereby agree to enter into a tolling agreement, and agree that any and all claims asserted by the parties in this matter have been tolled beginning as of March 24, 2025 (the “Effective Date”), and will remain tolled during the period of time in which the parties attempt to resolve their differences, but to no later than June 30, 2025. The parties may extend this expiration date by mutual written agreement.
2. The purpose and effect of this Tolling Agreement is to stop the running of any and all applicable statute of limitations as of the Effective Date and to restart the running of that statute of limitations immediately upon the expiration of this Tolling Agreement. At the end of this Tolling Agreement, all applicable statutes of limitations shall resume running from the day that they were tolled.
3. By entering into this Tolling Agreement, District does not waive the right to assert any defenses that could have been asserted before the Effective Date, or that could be asserted after the termination of this Tolling Agreement, including the statute of limitations or defenses based on the passage of time, provided that any applicable limitations period would be extended by the period of tolling while this Tolling Agreement is or was in effect.
4. This Tolling Agreement shall be construed, governed and enforced in accordance with the laws of the State of California, except that federal laws shall apply to matters of construction, governance or enforcement that are controlled or preempted by federal laws, statutes, regulations or rules. Nothing contained in this Tolling Agreement suggests that any party has agreed to the jurisdiction of any court.
5. This Tolling Agreement is not an admission of any alleged wrongdoing or legal liability by either Party.
6. Without the written consent of the other Party, District and Claimant shall not disclose to any third party the existence of this Tolling Agreement, any information exchanged between them, or any negotiations between them. However, nothing precludes either Party from confidentially discussing this matter with its counsel, Board of Directors, percipient witnesses, auditors, or other agents who have a business need to know. Notwithstanding anything in this paragraph, Claimant may introduce this Tolling Agreement into evidence to respond to District’s demurer or affirmative defense relating to the otherwise applicable statute of limitations or a court’s or trier of fact’s own motion or inquiry into the otherwise applicable statute of limitations.

7. This Tolling Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In the event that any signature is delivered by facsimile transmission or by email delivery of a Portable Document Format (".pdf") file, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile or ".pdf" signature page were an original thereof.

8. This Tolling Agreement may not be modified, altered, or amended except in writing signed by or on behalf of the Parties. No waiver of any provision of this Tolling Agreement shall constitute or be deemed a waiver of any other provision hereof, or a continuing waiver unless expressly so indicated in writing executed by the Parties' legal counsel. In no event shall any waiver of any provisions of this Tolling Agreement be binding unless it is in writing executed by the Parties' legal counsel.

By signature below, the parties (or through their counsel), agree to the terms of this Tolling Agreement.

Dated: _____

Adriana Valencia
Claimant

Dated: _____

Attorney for District